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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In The Matter of

DOCKET FILE COPY ORIGINAL

Amendment of the Commission's Rules  
Regarding Multiple Address Systems

)  
)  
) WT Docket No. 97-81  
)

To: The Commission

**COMMENTS  
OF THE  
AMERICAN PETROLEUM INSTITUTE**

**THE AMERICAN PETROLEUM  
INSTITUTE**

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## SUMMARY

API recognizes that the Commission often faces difficult choices in determining how best to apportion a scarce resource (*i.e.*, the electromagnetic spectrum) among the many parties and interest groups that are seeking to use it. This, however, is *not* one of those times. Taken together, the existing MAS bands and the new allocation at 932/941 MHz constitute an adequate amount of spectrum to satisfy all apparent demand for MAS spectrum, at least for the foreseeable future. By taking a few simple steps that do not in any way run afoul of the Balanced Budget Act of 1997, the Commission can meet the needs of all interested parties, provide overdue relief to a critical spectrum shortage that continues to intensify on a daily basis, and -- most importantly -- promote the safety of life, health and property and the integrity of the natural environment.

With respect to the 928/952/956 MHz bands, which are heavily occupied by auction-exempt Critical Infrastructure Industries ("CII") and state and local government licensees, the Commission need only ensure that such entities continue to have access to these bands for the provision of important safety-related services. In particular, the evidence supports an allocation of at least 70% of these bands exclusively for such services. Moreover, under no circumstances would the Commission be justified in instituting auctions in either the 928/952/956 MHz or 928/959 MHz bands, as these bands presently are licensed in a manner that typically avoids mutual exclusivity among license

applicants and that best meets the coverage requirements of the licensees that rely on this spectrum.

Because the existing MAS bands are heavily saturated in many areas, it is absolutely essential that the 932/941 MHz band also be made available to MAS users. Based upon that level of interest that has been demonstrated by various types of users and the important public safety interests at stake, API recommends that the forty channel pairs in this band be allocated and assigned as follows: (1) twenty channel pairs for CII entities, to be licensed on a site-by-site (non-auctioned) basis; (2) five channel pairs for governmental public safety entities, also to be licensed site-by-site and without auctions; and (3) fifteen channels pairs to be auctioned on a geographic basis for either commercial or private use.

Finally, API again implores the Commission to lift the licensing freeze that recently was placed on the 928/952/956 MHz MAS bands. The Commission's apparent willingness to bring to an utter halt the licensing and implementation of important *auction-exempt* public safety radio systems while it ponders its competitive bidding authority under the Budget Act is -- in a word -- inexcusable.

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<b>Amendment of the Commission's Rules</b>	)	<b>WT Docket No. 97-81</b>
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**To: The Commission**

**COMMENTS  
OF THE  
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The American Petroleum Institute ("API"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits the following Comments in response to the Commission's *Further Notice of Proposed Rule Making* ("*Further Notice*")<sup>1</sup> regarding the allocation, licensing and operation of Multiple Address System ("MAS") channels. In particular, the Commission inquires in its *Further Notice* as to the extent that its initial proposals in this proceeding are impacted by the Balanced Budget Act of 1997 ("Budget Act").

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<sup>1</sup> 64 Fed. Reg. 38617 (July 19, 1999).

## **I. BACKGROUND**

1. API is a national trade association representing approximately 350 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

2. API's Telecommunications Committee is supported and sustained by licensees that are authorized by the Commission to operate, among other telecommunications systems, point-to-point and point-to-multipoint (e.g., MAS) facilities in the Private Operational-Fixed Microwave Service ("POFS"). API's members utilize POFS systems to serve a variety of vital telecommunications requirements, including communications between remote oil and gas exploration and production sites, for supervisory control and data acquisition ("SCADA") systems, to communicate with refineries and to extend circuits to remote pipeline pump and compressor stations. The oil and gas industries were among the pioneers in the development of private microwave, utilizing their systems to monitor and operate petroleum and natural gas pipelines.

3. MAS assignments are used extensively in the production of oil and gas from both on-shore and offshore wells, as well as in the remote operation of pipeline facilities. For example, MAS alarm units are used to signal abnormal production levels, thereby indicating the need for corrective action to be taken either by remote or on-site measures. Interstate pipeline companies also have a growing need for MAS facilities to comply with recently-enacted Federal Energy Regulatory Commission regulations that require these companies, on the first business day of each calendar quarter, to disseminate electronically an index of all of their firm transportation and storage customers under contract as of that date.<sup>2/</sup>

4. Moreover, the petroleum, natural gas and energy distribution industries increasingly have relied upon MAS assignments from the 900 MHz band for the operation of SCADA systems. These systems, which involve two-way traffic requiring paired channels, allow a master station to control and monitor the status of a multitude of measurements and tolerance limits at wellheads, compressor stations and valves, thus eliminating the need for constant manual surveillance. In particular, SCADA systems are deployed in production fields and along pipelines to monitor and adjust a variety of operating parameters, such as temperature, pressure level and volume. These monitoring functions are essential to satisfy safety and environmental objectives and to maintain an acceptable level of production.

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<sup>2/</sup> See 18 C.F.R. § 284.106(c)(1).

5. Due to the importance of MAS and other private microwave systems to the operations of its members, API has been an active participant in all of the Commission's major rule making proceedings addressing private microwave use of the spectrum. Accordingly, API has participated in the Commission's previous proceedings involving MAS spectrum, including the Part 94 (now Part 101) Multiple Address proceeding (PR Docket No. 87-5) and the 932-935/941-944 MHz Fixed Allocation proceeding (Gen. Docket No. 82-243). Further, in the instant proceeding, API already has filed Comments, Reply Comments and Joint Supplemental Comments. The latter -- in which API joined with a number of other parties -- anticipated the Commission's questions and concerns expressed in its *Further Notice* and provided the Commission with much of the guidance that it is now formally seeking as to the impact of the Budget Act on this proceeding.<sup>3/</sup> Those Joint Supplemental Comments are incorporated herein by reference and resubmitted herewith as Exhibit A. Set forth below is some further input from API regarding the important issues raised in the *Further Notice*.

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<sup>3/</sup> See Joint Supplemental Comments of API, the American Water Works Association, the Association of American Railroads ("AAR"), East Bay Municipal Utility District and UTC, The Telecommunications Association (now the United Telecom Council ("UTC")), WT Docket No. 97-81 (filed Oct. 30, 1998).



## II. COMMENTS

6. With all due respect to the Commission and the difficult challenges it faces in making spectrum licensing and allocation decisions, API must admit that it is both frustrated and disappointed by the Commission's handling thus far of this proceeding. Simply stated, it appears that the Commission either is not listening to or does not care about the needs and opinions of the Critical Infrastructure Industries ("CII").<sup>4/</sup> These industries repeatedly have demonstrated a substantial and growing demand for MAS channels in order to meet important safety-related objectives. Yet, rather than taking prompt action to address these needs, the Commission has continued to frustrate these needs through the imposition of licensing freezes and the failure (as yet) to make any portion of the 932/941 MHz band available for site-by-site licensing by CII entities.

7. In these Comments, API again implores the Commission to reserve the 928/952/956 MHz bands and a substantial portion of the 932/941 MHz band for use by auction-exempt CII entities. Such an approach is entirely consistent with the provisions of the Budget Act and -- perhaps more importantly -- will promote the public's interest in the safe operation of its vital energy and transportation networks.

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<sup>4/</sup> As used herein, the term "Critical Infrastructure Industries" is meant to include pipelines, petroleum and natural gas companies, electric, gas and water utilities, and railroads.

**A. Auction-Exempt “Critical Infrastructure Industries” are the Primary Users of the 928/952/956 MHz MAS Bands and Must Continue to Have Access to this Spectrum**

8. With respect to the 928/952/956 MHz MAS bands, the Commission seeks comment in its *Further Notice* on the level of representation among current users in these bands of auction-exempt “public safety radio services,” as defined in the Budget Act.<sup>5/</sup> In the event that this auction-exempt category “reflects the current dominant use of these bands,” the Commission then asks whether it should allocate part or all of these bands for such “public safety radio services.”<sup>6/</sup> The Commission also tentatively concludes that site-by-site licensing should be retained if these bands are reserved exclusively for “public safety radio services.”<sup>7/</sup>

9. As an initial matter, API notes its dismay at the fact that it is being called upon yet again to prove that oil and natural gas companies and other auction-exempt entities are the dominant users of the 928/952/956 MHz bands. To begin with, the Commission already has at its disposal the scores of Comments filed during the first

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<sup>5/</sup> *Further Notice* at ¶ 20. For a discussion of the language and legislative history of the “public safety radio services” exemption and a demonstration as to why and how CII entities are eligible for the exemption, see Exhibit A at 4-19. The eligibility of petroleum and natural gas companies for the auction exemption also is discussed in detail in API’s Comments in the Commission’s ongoing proceeding regarding the implementation of the Budget Act (WT Docket No. 99-87).

<sup>6/</sup> *Further Notice* at ¶ 20.

<sup>7/</sup> *Id.* at ¶ 21.

phase of this proceeding which demonstrate beyond any doubt that the CII have a substantial presence in this band and a strong interest in continuing to have access to this spectrum.<sup>8/</sup> In preparing its initial Comments in this proceeding (which were filed in May 1997), API also conducted a survey of its member companies in an effort to quantify their existing and future MAS requirements. The results of this survey clearly demonstrate that oil and natural gas companies rely heavily on MAS spectrum -- particularly the 928/952 MHz band -- to serve important safety, environmental and related functions and that these industries have significant projected needs for additional MAS channels.<sup>9/</sup>

10. In addition to the substantial record that the Commission has amassed in this proceeding, it also has at its disposal its own computer database for the Fixed Microwave Service, which includes a wealth of information regarding MAS licensees. Accordingly, API believes it is inappropriate for the Commission to expect private parties to expend considerable resources compiling and reviewing information that is equally (if not more) available to the Commission. Faced with no apparent alternatives, however, API (with the assistance of Micronet Communications) has gathered and analyzed data gleaned from FCC Public Notices regarding the more than 11,000 applications filed since

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<sup>8/</sup> See, *e.g.*, initial Comments of API; Southern California Edison Company; Puget Sound Energy, Inc.; Public Service Company of New Mexico; Delmarva Power & Light; Cooperative Power Association; Burlington Northern and Santa Fe Railway Company and Norfolk Southern Corporation; UTC; AAR; Wells Rural Electric Company; GPM Gas Corporation; and Colorado Interstate Gas Company.

<sup>9/</sup> See API's initial Comments at 6-7 (attached hereto as Exhibit B).

1997 for assignments from the 928/952/956 MHz MAS bands. The following chart depicts the percentage of the total number of MAS applications that were filed by each of the specified categories of applicants during the indicated time periods:<sup>10/</sup>

	1997	1998	1999 (through June)	Overall (1997- June '99)
<b>Critical Infrastructure Industries</b>	63.3	55.1	65.5	60.0
<b>State and Local Governments</b>	5.4	11.4	14.7	9.7
<b>Business/Others</b>	31.3	33.5	19.8	30.3

This chart provides strong evidence that auction-exempt entities (which include -- at a minimum -- both the CII and State and local governments) are the dominant users of the 928/952/956 MHz MAS bands. Thus, API believes that either all or a substantial, representative portion of these bands (*i.e.*, at least 70%) should be reserved for auction-exempt "public safety radio services" and should continue to be licensed on a site-by-site basis. API will not reiterate herein the many reasons why site-by-site (non-geographic) licensing should be retained in these bands, but merely points out that there is overwhelming support in the record for the proposition that the MAS channels used by

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<sup>10/</sup> This information was compiled based on the service-specific codes reflected on the FCC's Public Notices (*e.g.*, IP, IW, etc.) or, where such codes were unavailable, based on the name of the licensee. While API believes the information in the chart to be quite accurate, the referenced percentages nonetheless should be construed as reasonable approximations.

CII entities and other private licensees are most appropriately and efficiently assigned in this manner.<sup>11/</sup>

11. API further emphasizes that, *if* any portion of these bands is not reserved exclusively for “public safety radio services,” such portion should *not* be subject to auctions, but should instead continue to be made available for site-by-site licensing by all private, internal users (including, but not limited to, CII entities). As discussed in greater detail in the Comments filed by API and numerous other parties in the Commission’s separate Budget Act proceeding (WT Docket No. 99-87), it would violate the Budget Act for the Commission to auction spectrum in the existing private radio bands (such as the 928/952/956 MHz MAS bands) because: (1) auctions only are permitted where there are mutually exclusive applications;<sup>12/</sup> (2) Congress has highlighted the Commission’s affirmative obligation to seek to avoid (not create) mutual exclusivity;<sup>13/</sup> and (3) the existing private bands are licensed on a site-by-site, first-come first-served, prior-coordinated basis, which typically does not result in mutual exclusivity and which is the most efficient licensing method for the majority of private systems. Under these

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<sup>11/</sup> See, e.g., Exhibit B (API’s initial Comments) at 30-33 and initial Comments of Microwave Data Systems at 2-6; UTC at 18-26; Puget Sound Energy, Inc. at 4-5; Public Service Company of New Mexico at 2; GTECH Corporation at 4-6; Alligator Communications, Inc. at 4-5; Black & Associates at 4-5; GPM Gas Corporation at 5-6; and Colorado Interstate Gas Company at 2-3.

<sup>12/</sup> See 47 U.S.C. § 309(j)(1).

<sup>13/</sup> See *id.* and 47 U.S.C. § 309(j)(6)(E).

circumstances, there is simply no justification for auctioning any part of the 928/952/956 MHz MAS bands, even a part that is made available for use by entities that are not eligible for the “public safety radio services” exemption.

12. For the same reasons, API strongly disagrees with the Commission’s tentative conclusion that it would be “required” to grant licenses for the 928/952/956 MHz bands through competitive bidding and to adopt a system of geographic licensing in the event that “the current and foreseeable use of these bands does not comport with [the] statutory definition” of “public safety radio services.”<sup>14/</sup> The Commission would not be “required” (or even permitted) to implement competitive bidding in these bands unless it were faced with mutually exclusive applications (by non-auction-exempt entities) that could not be resolved through other means such as negotiation or engineering solutions.<sup>15/</sup> As noted above, such a scenario is highly improbable in light of the manner in which these bands presently are (and should continue to be) licensed.

13. As a related matter, API also takes issue with the Commission’s suggestion that the 928/952/956 MHz bands, in their *entirety*, should be subject to auction

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<sup>14/</sup> *Further Notice* at ¶ 21.

<sup>15/</sup> *See id.*

unless auction-exempt entities are shown to be the “dominant” users of the bands.<sup>16/</sup> Although such entities clearly are the “dominant” users of the particular bands in question, it would be extremely problematic and detrimental to the public interest if the Commission were only to assign or reserve spectrum for “public safety radio services” in bands where such services represent the “dominant use.” Assume, for the sake of argument, that “public safety radio services” constitute approximately 40% of the current or foreseeable operations in each of many different private radio bands, but are not the “dominant use” in any particular band. By the Commission’s apparent approach, not a single frequency band or portion thereof would be set aside for “public safety radio services” -- with potentially devastating consequences to human life, health and the natural environment. It would be far more rational and equitable to assign a *proportionate* number of channels or frequencies to “public safety radio services” in every existing band relied upon by auction-exempt entities and every new spectrum band for which they are determined to have a need.

**B. The Freeze on the 928/952/956 MHz Bands Must be Lifted Immediately**

14. On July 23, 1999, API, UTC and AAR filed an *Emergency Request for Limited Exception to Application Freeze* (“*Emergency Request*”), which asked the Commission to lift its licensing freeze on the 928/952/956 MHz bands, at least with

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<sup>16/</sup> See *Further Notice* at 20.

respect to applications filed by auction-exempt CII entities. Other parties subsequently filed pleadings in support of the *Emergency Request*,<sup>17/</sup> while no opposition has (to API's knowledge) been presented. In light of the serious public safety interests at stake, API is disheartened that, to date, the Commission has failed to issue any response to the *Emergency Request*.

15. While API believes that the *Emergency Request* and supporting statements speak for themselves and make a compelling case for the requested relief, it wishes to add herein that the effects of the freeze already are being felt by the petroleum and natural gas industries, with potentially devastating consequences to public safety. For example, literally on the eve of the freeze, one oil company was preparing to file an application for a proposed MAS that would be used both to prevent spills and leaks in connection with its oil well operations and to improve the company's ability to detect and quickly respond to any emergency situations that may arise. Now, unless the freeze is lifted (or waived<sup>18/</sup>), the company must either place on hold its efforts to enhance the safety of its

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<sup>17/</sup> See *Petition of Midwest Energy, Inc., in Support of CII Petitioners' Emergency Request for Limited Exception to Application Freeze* (filed Aug. 24, 1999); *Statement of Adaptive Broadband Corporation in Support of the Emergency Request for Limited Exception to Application Freeze* (filed July 29, 1999).

<sup>18/</sup> API anticipates that, as long as the freeze remains in effect, API members and other CII entities will seek recourse through the filing of waiver requests. While API certainly would encourage the Commission to grant any such requests that entail safety concerns, API does not believe that the waiver process is an effective method of dealing with the serious problem that has been created by the freeze. Not only would the filing of waiver  
(continued...)



operations or pursue less effective alternatives. Likewise, a natural gas company that uses MAS channels in the Gulf of Mexico to transmit critical information onshore to its gas dispatching and electronic measurement computer systems will soon need to move one of its MAS master sites from a leased platform in the Gulf to a new location (due to the impending sale of the platform by its owner), but will be impeded in its efforts to do so as a result of the freeze. Other examples abound and are being brought to API's attention virtually every day. Thus, API again urges the Commission to recognize and put an end to the great (and presumably unintended) harm that is being imposed by this freeze and that continues to grow with each passing day that the freeze remains in effect.

**C. There Must be a Substantial Set-Aside in the Band 932/941 MHz for Auction-Exempt Entities**

16. The Commission tentatively finds in its *Further Notice* that the proposed use of the 932/941 MHz MAS band does not fall within the auction exemption for "public safety radio services" and that licenses for this band should be assigned through competitive bidding.<sup>19/</sup> In support of this tentative finding, the Commission simply

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<sup>18/</sup>(...continued)

requests in this instance impose undue administrative burdens on both applicants and the Commission, but it also would cause unacceptable delays in the time period required to process and grant MAS applications (and, accordingly, unacceptable delays in the implementation of much-needed public safety systems).

<sup>19/</sup> *Further Notice* at ¶ 19.

reiterates its prior conclusion that “a majority of the dismissed applications for [the 932/941 MHz band] proposed the offering of services of a commercial nature.”<sup>20/</sup>

17. In its initial Comments, however, API discussed in depth the reasons why it questions the Commission’s conclusion on this issue and believes that the greatest demand and need for this spectrum is by private, internal licensees such as CII entities.<sup>21/</sup> Many commenting parties shared API’s views regarding the 932/941 MHz band and, like API, argued that there should be a substantial set-aside in this band for private spectrum users in order to alleviate congestion in the existing MAS bands.<sup>22/</sup> Recognizing the implications of the Budget Act, API, UTC and AAR then advocated in their Joint Supplemental Comments that the recommended private set-aside be limited to auction-exempt CII entities.<sup>23/</sup> In light of the foregoing, API is disturbed that the Commission fails even to mention this substantial weight of opinion in its *Further Notice* or to attempt to provide any further justification for its as yet unsubstantiated conclusions regarding

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<sup>20/</sup> Id.

<sup>21/</sup> See Exhibit B at 10-28.

<sup>22/</sup> See initial Comments of Microwave Data Systems at 2-6; UTC at 18-26; Puget Sound Energy, Inc. at 4-5; Public Service Company of New Mexico at 2; GTECH Corporation at 4-6; Alligator Communications, Inc. at 4-5; Black & Associates at 4-5; GPM Gas Corporation at 5-6; Colorado Interstate Gas Company at 2-3; and API at 23-28.

<sup>23/</sup> See Exhibit A at 12-19.

this band.<sup>24/</sup> Accordingly, API again asks the Commission to justify these findings and also poses the following question: if there truly is an overwhelming interest in the 932/941 MHz MAS band for the provision of commercial services, why is it that virtually all of the comments, other pleadings and *ex parte* presentations in this proceeding have been filed or made by private spectrum users (primarily CII entities), their trade associations and their equipment manufacturers?<sup>25/</sup> In short, API implores the Commission to address head on all of the facts and evidence that have been presented here and finally to acknowledge where the true demand for new MAS spectrum lies.

18. The Commission does, admittedly, discuss in its *Further Notice* the possibility of a frequency set-aside in the 932/941 MHz band for auction-exempt “public safety radio services.”<sup>26/</sup> Somewhat astoundingly, however, in light of the record already

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<sup>24/</sup> Indeed, the Commission goes as far as to claim that “[t]he comments received in response to the *Notice* generally support the Commission’s proposals.” *Further Notice* at ¶ 7. API respectfully disagrees with this assertion, at least with regard to the Commission’s proposals regarding the 932/941 MHz band.

<sup>25/</sup> A number of Comments (many of which appear to be form letters) also were filed during the earlier phase of this proceeding by individuals who had applied for assignments from the 932/941 MHz MAS band during the initial filing window. Rather than expressing any interest in operating commercial systems on this spectrum, these individuals typically noted outrage at the prospect of auctions and requested the return of their application filing fees. Thus, these Comments provide further evidence that -- as API and others have suggested -- many of the 50,000 applications were speculative in nature and were filed under the mistaken belief (fostered by “application mills”) that MAS spectrum provided an opportunity to “get rich quick.”

<sup>26/</sup> See *Further Notice* at ¶¶ 22-23.

amassed in this proceeding, the Commission asks whether there is any need for such a set-aside if the Commission decides to reserve part or all of the 928/952/956 MHz bands for auction-exempt entities.<sup>27/</sup> In response, API reminds the Commission that the MAS allocation from the 932/941 MHz band was made ten years ago in order to ease the congestion that existed in the 928/952/956 MHz bands (and that has only worsened since that time).<sup>28/</sup> As a result of this congestion, many API members have found themselves unable in recent years to identify and license new MAS channels that are needed to support system expansion and other important functions.<sup>29/</sup> Indeed, allocating only the highly saturated 928/952/956 MHz bands for CII and other auction-exempt entities would be a hollow victory, at best, for these MAS spectrum users.

19. Quite frankly, API believes that the Commission will be abrogating its duties to allocate spectrum in a manner that promotes the public interest (including public safety) *unless* it creates a substantial set-aside in the 932/941 MHz band for *non-governmental* “public safety radio services.” In particular, API proposes that at least twenty channel pairs be set aside for auction-exempt (non-governmental) critical

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<sup>27/</sup> *Id.* at ¶ 22.

<sup>28/</sup> See Amendment of Parts 1, 21, 74 and 94 of the Commission’s Rules to Establish Service and Technical Rules for Government and Non-Government Fixed Service Usage of the Frequency Bands 932-935 MHz and 941-944 MHz, GEN Docket No. 82-243, *Third Notice of Proposed Rule Making*, 2 FCC Rcd 1608, at ¶ 5 (March 16, 1987).

<sup>29/</sup> See Exhibit B at 23-25.

infrastructure services, to be assigned on a site-by-site, first-come first-served basis.<sup>30/</sup>

This set-aside should be *separate from and in addition to* the five-channel set-aside that already has been proposed for “public safety/Federal Government use.” In other words, the Commission should create two distinct auction-exempt pools, each with separate eligibility requirements. The creation of such separate pools would alleviate concerns that frequently are expressed by government public safety entities regarding the need to preserve the integrity and availability of their “Public Safety Pool” spectrum. Similarly, such an approach would promote efficient spectrum use and facilitate frequency coordination efforts through the sharing of MAS channels only among categories of users that typically have compatible operations and spectrum needs. As indicated in the chart set forth in Section A above, CII entities filed approximately *six times* more MAS applications than State and local governments between January 1997 and June 1997. Therefore, API believes that a significantly larger allocation for CII entities than for government users (such as what API has proposed) is entirely warranted.

**D. All Incumbent MAS Operations in the 928/952/956 MHz and 928/959 MHz Bands Should be Grandfathered**

20. As discussed in Section A above, API does not believe that the Commission has statutory authority to conduct auctions in the 928/952/956 MHz MAS

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<sup>30/</sup> Any mutually-exclusive applications should be resolved through private negotiation and/or Alternative Dispute Resolution.

bands. For precisely the same reason, auctions also are unwarranted in the 928/959 MHz MAS band (*i.e.*, no mutual exclusivity). In the event, however, that the Commission nonetheless decides to implement auctions in any of these bands or to otherwise alter the eligibility requirements for any portion of this spectrum, API firmly believes that grandfather rights are essential to prevent the disruption and/or dislocation of important incumbent MAS operations.<sup>31/</sup>

### III. CONCLUSION

21. API urges the Commission to recognize several basic facts that it has, thus far, seemed inclined to disregard: (1) Critical Infrastructures Industries rely heavily on MAS channels to provide vital “public safety radio services”; (2) CII licensees and other auction-exempt entities are the dominant users of the 928/952/956 MHz MAS bands; (3) the ongoing licensing freeze in these bands is imperiling public safety; (4) the 928/952/956 MHz MAS bands have become heavily saturated in many areas; (5) CII entities have demonstrated a substantial need for additional MAS spectrum; and (6) no comparable demand for commercial use of the 932/941 MHz band has been shown. Ten years is more than enough time for API members to wait for the Commission to acknowledge and address their MAS spectrum needs. The interests of public safety

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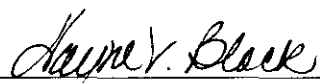
<sup>31/</sup> For a more detailed discussion of API’s position on this issue, see Joint Supplemental Comments (Exhibit A) at 20-22.

demand that the Commission take immediate action to eradicate the serious deficiencies noted by API and others in this proceeding.

**WHEREFORE, THE PREMISES CONSIDERED**, the American Petroleum Institute respectfully submits the foregoing Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

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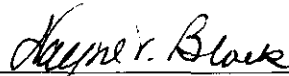
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